

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

NETLIST, INC.

Plaintiff,

v.

SAMSUNG ELECTRONICS CO., LTD, et al.

Defendants.

Civil Case No. 2:22cv00293-JRG
(Lead Case)

JURY TRIAL DEMANDED

NETLIST, INC.

Plaintiff,

v.

MICRON TECHNOLOGY TEXAS, LLC, et al.

Defendants.

Civil Case No. 2:22cv-00294-JRG
(Member Case)

JURY TRIAL DEMANDED

**SAMSUNG'S NOTICE OF SUPPLEMENTAL AUTHORITY
PERTAINING TO SAMSUNG'S MOTION TO STAY PENDING
RESOLUTION OF THE C.D. CAL. CASE REVERSED AND REMANDED
BY THE NINTH CIRCUIT REGARDING SAMSUNG'S LICENSE (DKT. 187)**

On October 23, 2023, Samsung moved to stay this case pending resolution of the C.D. Cal. Case. (Dkt. 187). The parties completed briefing on Samsung's motion on November 15, 2023. Samsung provides this notice of supplemental authority to inform the Court of three relevant developments since Samsung filed its motion.

#1 – Order Staying the District of Delaware Case

Samsung Electronics Co., Ltd. et at. v. Netlist, Inc., No. 1:21-cv-1453, Dkt. 223 (D. Del. Dec. 1, 2023) (attached as **Exhibit 1**). In the order, Judge Hall stated:

Having considered the totality of the circumstances—including in particular (i) the history and current procedural posture of this case and the related cases in other districts, (ii) that *the ongoing proceedings in the Central District of California pertaining to the Netlist/Samsung JDLA have the potential to simplify all or some of the issues in this case*, (iii) *that a stay would not unduly prejudice Netlist* under the particular circumstances here (where Netlist and Samsung at least at one point had a cross-licensing agreement that appears to have covered the patent-in-suit), and (iv) that *the Court is unpersuaded that Samsung advanced an inconsistent position before the Ninth Circuit Court of Appeals*—the Court concludes that the most appropriate course of action is to stay this case.

Ex. 1 (emphases added).

#2 – The Joint Notice in the C.D. Cal. Case and the C.D. Cal.’s Scheduling Order

On November 27, 2023, Samsung and Netlist submitted a Joint Status Report in the C.D. Cal. Case in response to the C.D. Cal. court’s minute order reopening the case. *Netlist Inc. v. Samsung Electronics Co., Ltd.*, Case No. 8:20-cv-00993-MCS-ADS, Dkt. 343 (C.D. Cal. November 27, 2023) (attached as **Exhibit 2**). In the Joint Status Report, Samsung stated:

The threshold issue before the Court is whether the extrinsic evidence creates a genuine issue of material fact as to the meaning of Section 6.2 of the JDLA. As this issue was already briefed once, there is adequate evidence in the summary judgment record for the Court to make this determination. Because the prior briefing did not focus solely on the issue the Ninth Circuit has now mandated be considered, Samsung proposes targeted supplemental briefs to specifically address the meaning of Section 6.2, to be concurrently filed within 30 days of the Court’s decision following the filing of this Joint Status Report, with each side having the right to file a responsive brief 15 days thereafter. This supplemental briefing will allow the Court to focus its attention on the relevant evidence and law and comply with the Ninth Circuit’s mandate.

If the Court adopts Samsung’s interpretation of Section 6.2, there is no need for a trial on whether any alleged breach of Section 6.2 is material, and Netlist’s request for a declaration that it validly terminated the JDLA must be denied.

Ex. 3.

On November 30, 2023, the C.D. Cal. Court issued a minute order. *Netlist Inc. v. Samsung Electronics Co., Ltd.*, No. 8:20-cv-00993-MCS-ADS, Dkt. 345 (C.D. Cal. Nov. 30, 2023) (attached as **Exhibit 3**). In the order, the C.D. Cal. court stated:

After a Ninth Circuit panel remanded this case for further proceedings, (Mem., ECF No. 334; Mandate, ECF No. 340), the Court ordered the parties to file a joint status report proposing a schedule, (Order, ECF No. 341). Having reviewed the parties' report, (J. Status Rep., ECF No. 343), *the* Court largely adopts Samsung's proposal to re brief the remaining issues in the summary judgment proceedings based only on the existing record. (J. Status Rep. 23.) The Court sets the following schedule: Event Date: Simultaneous opening briefs due January 8, 2024; Simultaneous responsive briefs due January 22, 2024; Hearing February 5, 2024, at 9:00 a.m. The Court will set new trial and pretrial dates, if necessary, upon issuing a summary judgment order. The Court orders the parties to follow current versions of this Court's standing order. Netlist may file a duly noticed motion seeking such relief, but it must set any such motion for hearing on February 5, 2024, at the same time as the summary judgment hearing.

Ex. 4.

#3 – Netlist's Motion To Stay the C.D. Cal. Case

On November 30, 2023, Netlist filed a motion to stay the C.D. Cal. Case, which Samsung opposes. *Netlist Inc. v. Samsung Electronics Co., Ltd.*, No. 8:20-cv-00993-MCS-ADS, Dkt. 344 (C.D. Cal. Nov. 30, 2023) (attached as **Exhibit 4**).

Date: December 7, 2023

Respectfully submitted,

/s/ Melissa R. Smith

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*Attorneys for Defendants Samsung Electronics Co., Ltd.;
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was filed electronically in compliance with Local Rule CV-5 on December 7, 2023. As of this date, all counsel of record have consented to electronic service and are being served with a copy of this document through the Court's CM/ECF system under Local Rule CV-5(a)(3)(A) and by electronic mail.

/s/ Melissa R. Smith